

**COMMONWEALTH OF KENTUCKY
NELSON CIRCUIT COURT
CIVIL BRANCH
DIVISION _____
CIVIL ACTION NO. 24-CI _____**

LUXCO, INC.

PLAINTIFF/APPELLANT

VS.

**NELSON COUNTY, a county and
political subdivision of the
Commonwealth of Kentucky**

and

**NELSON COUNTY FISCAL COURT and
Its Members in Their Official Capacities
Only: JUDGE EXECUTIVE TIM
HUTCHINS and MAGISTRATES KEITH
METCALFE, ADAM WHEATLEY, M.T.
HARNED, JEFF LEAR, and JON SNOW**

DEFENDANTS/APPELLEES

SERVE:

**Judge/Executive Tim Hutchins,
on behalf of Nelson County Fiscal Court
One Court Square
Bardstown, Kentucky 40004**

COMPLAINT AND APPEAL

Comes Plaintiff/Appellant Luxco, Inc., and for its Complaint and Appeal avers as follows:

PARTIES

1. Plaintiff/Appellant, Luxco, Inc. (“Plaintiff” or “Luxco”) is a foreign corporation organized in Missouri, authorized to do business in Kentucky, and is the owner of real property located at 4657 Springfield Road and 421 Cane Run Loop, Bardstown, Kentucky (the “Property” or “Project Site”) in Nelson County, Kentucky. At all times relevant hereto, Luxco was the intended beneficiary of the proceeds of industrial revenue bonds to be issued by Nelson County (the “Bonds”) and was the applicant for a Planned Unit Development (“PUD”) overlay on

Presiding Judge: HON. CHARLES C. SIMMS, III (610193)

COM : 000001 of 000025

182.592 gross acres of the Property zoned Agricultural (A-1) (“PUD Overlay Request”) in order to build, operate, and maintain new distilled spirits rickhouse storage warehouses (“Project”).

2. Defendant/Appellee Nelson County (“Nelson County”) is a county and political subdivision of the Commonwealth of Kentucky.

3. Defendant/Appellee Nelson County Fiscal Court (“Fiscal Court”) is comprised by its members: Tim Hutchins, Keith Metcalfe, Adam Wheatley, M.T. Harned, Jeff Lear, and Jon Snow. These members, in their official capacities, are elected officials empowered to take final action on ordinances and overlay requests by state law and local ordinances for property located within the county limits of Nelson County, Kentucky.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over the Defendants because all are located in Kentucky and because all have undertaken actions or omissions in Kentucky.

5. This Court has subject matter jurisdiction over the claims in this Complaint and Appeal, in part, because KRS 100.347 authorizes a party that is injured or aggrieved by a final action of a legislative body relating to the zoning entitlement of a property to appeal to the circuit court of the county in which the subject property lies.

6. This Court also has subject matter jurisdiction over the claims in this Complaint and Appeal because KRS Chapter 418 vests this court with jurisdiction over an action by a plaintiff seeking a declaration of rights where an actual controversy exists; such controversy exists in the case sub judice.

7. Venue is appropriate in this Court pursuant to KRS 452.460 because the defendants are located in Nelson County and pursuant to KRS 452.400 because the location of the Project Site is in Nelson County.

STATEMENT OF FACTS COMMON TO ALL COUNTS

8. Luxco restates its previous allegations and incorporates the same herein by reference.

9. Luxco is a leading producer of distilled spirits and branded spirits products, with existing distillery operations, a popular visitors center, and distilled spirits warehousing facilities located in Nelson County, Kentucky. Luxco's current Nelson County facilities are known as Lux Row Distillers and located at 1 Lux Row, 3050 E. John Rowan Boulevard, Bardstown, Kentucky 40004 ("Lux Row").

10. Luxco first broke ground on its existing Lux Row campus on John Rowan Boulevard in July 2016, and the doors opened to the public in March 2018. Over time, Luxco has responded to the commercial success of its Bardstown visitor center and the growth of its branded spirits that are distilled at Lux Row Distillers by expanding the Lux Row operations and campus.

11. At the end of 2023, the Lux Row John Rowan Boulevard campus consisted of a 20,000 square foot bourbon production facility with full scale grain handling system and eight separate 20,000 square foot rickhouse barrel aging warehouses (consisting of rack supported structures). Along with the production facilities on the site, the campus includes a comprehensive visitor center and tasting room that includes the circa 1806 Stone House, which houses offices and further guest experience. As of the end of 2023, Luxco has invested a total of approximately \$80 million dollars in the development and construction of the Lux Row John Rowan Boulevard campus, which currently employs approximately 62 employees in Bardstown and received over forty-six thousand visitors at the Lux Row visitor center in 2023.

12. However, despite the ongoing expansion at the Lux Row John Rowan Boulevard campus over the years, the continued growth of the Lux Row brands of Kentucky Straight Bourbon Whiskey and other distilled spirits meant that the barrel aging needs of Lux Row had exceeded the space and acreage available at the John Rowan Boulevard campus and that Luxco would need to develop additional warehouse facilities. Given the success of the Lux Row investment at its existing Bardstown campus and the logistics involved with transporting barrels from its distillery operations at the main Lux Row campus to a satellite storage facility, Lux Row

very much wanted to find suitable property near Bardstown – the self-proclaimed “Bourbon Capital of the World.”

13. As a result, Luxco embarked on an exhaustive search for suitable property on which to construct new warehouse facilities, which resulted in finding the adjacent 4657 Springfield Road and 421 Cane Run Loop parcels in a rural area outside of Bardstown located approximately 4 miles from the main Lux Row campus. These parcels were already zoned A-1 and together totaled over 182 acres.

14. Luxco negotiated satisfactory real estate purchase agreements with the owners of these parcels – which included, in part, an agreement by Luxco to allow one of the owners to remain on the property as the seller desired through a leaseback arrangement – and agreed to pay market rate value of \$2,499,200 million in total to purchase these parcels. Luxco signed the real estate purchase agreements for the Cane Run Loop parcels on September 30, 2022, and the Springfield Road parcel on December 19, 2022. Luxco’s obligation to close both transactions and purchase the properties was contingent (one expressly and the other effectively) upon the approval of governmental approvals and economic incentives as hereinafter described.

15. Luxco entered into these agreements with the clear intention and expectation that it would proceed to build rickhouse warehouse structures (consisting of rack supported structures) on the Project Site given the zoning of the properties and the existing Nelson County regulatory scheme.

16. Simultaneously, Luxco and the Nelson County Fiscal Court began negotiations in November 2022 to incentivize Luxco to build its desired new warehouse facilities for bourbon aging on the Project Site through the issuance of industrial revenue bonds by Nelson County (the Bonds).

17. During these negotiations, Luxco provided specific details on the location of the Project Site to the Nelson County Economic Development Agency and former Judge/Executive

Dean Watts. The sitting Judge/Executive serves as a board member of the Nelson County Economic Development Agency.

18. Due to this and other evidence, the facts demonstrate that the Nelson County Fiscal Court knew or should have known of the location of the Project Site prior to voting to approve the Inducement Resolution and executing the MOA discussed in detail below.

19. On December 9, 2022, Luxco representatives met with Nelson County representatives – including recently-elected Nelson County Judge/Executive Tim Hutchins, outgoing Nelson County Judge/Executive Nicky Rapier, and Kim Huston, President of the Nelson County Economic Development Agency – to discuss the Project and the financing of the costs of the Project with the proceeds of the Bonds to be issued by Nelson County.

20. On January 13, 2023, Luxco representatives met with the Fiscal Court at a Special Session of Nelson Fiscal Court to discuss the Project and to request the Fiscal Court agree that Nelson County issue the Bonds to finance the costs of the Project.

21. At this Special Session, the Nelson Fiscal Court voted unanimously to approve a resolution preliminarily approving industrial revenue bond financings for the Project so as to induce Luxco to undertake the Project. A copy of the “Fiscal Court Orders” from January 13, 2023, is attached hereto at **Exhibit A**.

22. The financing proposed in the resolution was specifically designed to ensure Nelson County and the other local governments would continue to receive local property taxes on the distilled spirits (whiskey barrels and distillate) (“DSP Taxes”) stored at the Project Site during the term of the bonds. The resolution approved a Payment in Lieu of DSP Taxes Agreement (“PILOT Agreement”), the form of which was attached as Exhibit C to the resolution. If local DSP Taxes were subsequently abolished, repealed, or modified by the Kentucky General Assembly (a topic then under consideration by the legislature), the PILOT Agreement would require Luxco to make payments to each of Nelson County, the Nelson County Extension

District, the Nelson County Public Library, and the Nelson County School District to hold the local districts harmless from any such change in the tax law.

23. The Fiscal Court on January 13, 2023 unanimously adopted an “Inducement Resolution” for the purposes of, as stated in the title, (A) preliminarily approving industrial revenue bond financings for the Project, codenamed “Project Spirits”, (B) authorizing the initiation of the acquisition, construction, installation, and equipping of the Project, (C) agreeing to issue industrial revenue bonds in up to eight series at the appropriate times, and (D) taking other preliminary actions. The Inducement Resolution approved and authorized execution and delivery of (A) a Memorandum of Agreement memorializing Nelson County’s agreement to issue the Bonds to finance the costs of the Project (the “MOA”) and (B) a Payment in Lieu of DSP Tax Agreement (the “PILOT Agreement”) to be executed and delivered when the Bonds were issued. The Inducement Resolution also approved other related documents and other related actions. A copy of the Inducement Resolution is attached hereto as **Exhibit B**. A copy of the executed MOA identifying Luxco as the distiller developing “Project Spirits” is attached hereto as **Exhibit C**.

24. The Recitals to the Inducement Resolution state that “the Issuer [Nelson County] is authorized by the Act [KRS 103.200 *et seq.*] to issue its industrial revenue bonds in up to eight series for the purpose of defraying the costs of acquiring, constructing, installing, and equipping ‘industrial building’ facilities, which term includes land, buildings, fixtures, and equipment such as the Project; discussions have occurred between representatives of the Company [Luxco] and the Issuer incident to the issuance of such industrial revenue bonds by the Issuer for the purpose of financing the Project; it is the intention of the Issuer, and the Issuer has agreed and hereby agrees with the Company, to issue such industrial revenue bonds in up to eight series upon compliance by the Company with such reasonable conditions and obligations as the Issuer may require and documents incident to such bond issues and upon the agreement of the Company to pay all reasonable costs and expenses of the Issuer related to or arising from such

issuances from bond proceeds or other sources; and the Issuer has authorized the Company to proceed with the initiation of the acquisition, construction, installation, and equipping of the Project, subject to reimbursement of such costs from the proceeds of the industrial revenue bonds, as and when issued” which Recitals were expressly incorporated into the terms of the Agreement. *See*, Inducement Resolution, **Exhibit B**, p. 1, Recital 4, and p. 2, Section 1.

25. The Inducement Resolution states in part: “The acquisition, construction, installation, and equipping of the Project may be initiated and undertaken or caused to be initiated and undertaken by the Company [Luxco] forthwith, and the Company is authorized to formulate and develop plans and specifications for the Project and to enter into such contracts and undertakings as may be required for the acquisition, construction, installation, and equipping of the Project.” *See*, Inducement Resolution, **Exhibit B**, p. 3, Section 2.

26. The Inducement Resolution also states in part: “All resolutions, municipal orders, and other official actions of the Issuer or parts thereof in conflict herewith are, to the extent of such conflict, hereby rescinded.” *See*, Inducement Resolution, **Exhibit B**, p. 3, Section 9.

27. On January 13, 2023, Judge/Executive Tim Hutchins executed the MOA on behalf of the Nelson County, and David Colo executed the MOA on behalf of Luxco as Chief Executive Officer.

28. The Recitals to the MOA state that “The Issuer is authorized under Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes (the ‘Act’) to issue industrial revenue bonds in one or more series to finance the costs of acquiring, constructing, installing, and equipping certain industrial projects and facilities . . . The Issuer proposes to issue the Bonds to finance the Project and desires to authorize the Company to proceed with the financing of the Project and be reimbursed from the proceeds of the Bonds for costs incurred related thereto before the issuance of any series of the Bonds . . . the Issuer desires to encourage and induce the Company to proceed with the financing of the Project . . . The Issuer adopted a Resolution on the date hereof approving the industrial revenue bond financing of the Project for

the benefit of the Company and any affiliate thereof, reaffirming the Issuer's agreement in prior correspondence and discussions to undertake such financing at the appropriate time, and authorizing the execution of this Memorandum of Agreement" which Recitals were expressly incorporated into the terms of the Agreement. *See*, Inducement Resolution, **Exhibit C**, p. 1-2, Section 1.

29. The MOA expressly incorporates and is founded upon Nelson County's agreement to support the Project, including through its issuance of the Bonds as provided in the Inducement Resolution.

30. Under the terms of the MOA, Nelson County specifically agreed that "[t]he Company [Luxco] may commence the acquisition, construction, installation and equipping of the Project and may provide or cause to be provided, at its own expense, any necessary interim financing to permit such acquisition, construction, installation, and equipping to commence and continue" *See*, MOA, **Exhibit C**, p. 2, Section 2.

31. Under the terms of the MOA, Nelson County specifically agreed to "take or cause to be taken such other acts and adopt or cause to be adopted such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate pursuant thereto." *See*, MOA, **Exhibit C**, p. 2, Section 6.

32. Following the execution of the MOA, and in direct reliance upon the execution of the MOA and Nelson County's binding commitment to issue industrial revenue bonds for the warehouse Project planned specifically for the Project Site, Luxco then proceeded to close on the acquisition of the Project Site parcels per the terms of the real estate purchase agreements signed on September 30 and December 19, 2022. These closings occurred on February 21, 2023 for the combined purchase price of \$2,499,200. But for (i) the approval by the Fiscal Court of Inducement Resolution and execution of the MOA, and (ii) the then existing zoning regulations which allowed the construction of distilled spirits storage facilities on the Project Site as a matter of right, Luxco would not have consummated the purchases.

33. As expressly directed by the MOA, Luxco has continued to incur significant expenses related to the development of the Project prior to and since acquiring the Project Site, including significant architecture and engineering fees, fees associated with the zoning and PUD process, and related legal fees, all towards the attempted development of the Project in reliance on the signed MOA.

34. At the time of entering into the MOA and acquiring the Project Site, a distilled spirits storage facility was specifically identified as a principal permitted use in the Agricultural District (A-1) under the Nelson County Zoning Regulations.

35. At the time of entering into the MOA and acquiring the Project Site, the permitting of a distilled spirits storage facility only required meeting the following requirements: (1) the site shall be a minimum 100 acres; (2) the construction type shall be limited to rack supported structures protected throughout by an automatic fire suppression system (sprinkled); (3) the maximum size of any single structure shall not exceed a footprint of 40,000 square feet, excluding stairwells and open docks, and shall not exceed 60 feet in height; (4) all structures shall be set back a minimum of 300 feet from property lines; and, (5) at least 25 percent of the property shall be dedicated to agricultural uses as defined in KRS 100 and/or preserved as a conservation area.

36. It is undisputed that the Project and the Project Site met all of these requirements and Luxco has previously demonstrated the meeting of each of these requirements in materials presented to the Defendants.

37. After executing the MOA, on May 11, 2023, the Fiscal Court issued a “30-day pause on all zoning applications” related to any distilled spirits storage facility to promulgate new regulations governing distilled spirits storage facilities. See, **Exhibit D**.

38. On July 10, 2023, the Fiscal Court passed a new ordinance governing distilled spirits storage facilities in the A-1 zone requiring a Planned Unit Development overlay.

39. The new distilled spirits storage facilities ordinance now requires the following mandatory requirements in Nelson County's Joint Zoning Regulation Section 6.1(D)(4):

- (a) The site shall be a minimum 100 acres.
- (b) The construction type shall be limited to rack supported structures constructed in accordance with current edition of the Kentucky Building Code.
- (c) Such structures shall be protected throughout by an automatic fire suppression system (sprinklered).
- (d) The maximum size of any single structure shall not exceed a footprint of 40,000 square feet, excluding stairwells and open docks, and shall not exceed 60 feet in height.
- (e) All structures shall be set back a minimum of 200 feet from property lines.
- (f) Such structures shall be located at least 400 feet from any principal residential structure on an adjoining property. Such principal residential structure shall be an existing structure located on the adjoining property at the time of the PUD application submittal. This separation requirement shall not apply to any accessory structure located on the adjoining property and shall not apply to any principal residential structure that is constructed after the time of the PUD application submittal.
- (g) A landscape plan must be submitted and show a designated landscape buffer area along the streetscape of the proposed development. The streetscape, or front buffer area, shall be within the 50- foot front setback along the public road frontage and shall have a mixture of canopy trees. One canopy tree is required for every 30 feet of road frontage of the tract; fractions equal to or greater than 0.50 are rounded up. All trees shall be a minimum of 2-inch diameter at breast height and 6-foot tall at planting. All required tree plantings must be maintained, and any tree planting that dies must be replaced in a timely manner;

(h) At least 25 percent of the property shall be dedicated to agricultural uses as defined in KRS 100 and/or preserved as a conservation area, and such area shall be delineated on the submitted development plan.

(i) The Applicant must submit a roadway adequacy analysis identifying the current pavement conditions, curves, and intersections from KYTC [Kentucky Transportation Cabinet] designated arterials, or collectors to the site to the appropriate agency(ies) (i.e., Planning Commission and city, county or state road departments). The Applicant must submit evidence of agency review and determination of compliance with applicable road standards and/or identification of any improvements or other mitigation requirements. If improvements or other mitigation is required, the Applicant shall either (a) complete any improvements or mitigation at their expense or (b) participate in a public and private partnership program, as evidenced by a written certification from the appropriate agency, that will result in improvements or mitigation where the study and review indicate deficiencies.

(j) The Applicant shall meet with the adjoining property owners prior to the formal filing of an application, and such meeting shall be conducted no more than 90 days prior to the formal application filing, must be held at a location that is convenient for the adjoining property owners, and shall occur no earlier than 6:00 p.m. The Applicant shall be responsible for sending notices to all adjoining property owners, as provided by Nelson County Property Valuation Office, at least 14 days prior to the meeting. At the time of PUD application filing, the Applicant must submit the following documentation: (a) Copy of the meeting notification letter and proof of service; (b) List of adjoining property owners who received the notice; (c) A sign-in sheet from the meeting; and (d) A short

summary of the meeting detailing specific items of concern and proposed resolutions. *See, **Exhibit E.***

40. It is undisputed that the Project and the Project Site also meet all of the new requirements for distilled spirits storage facilities from the July 2023 PUD Ordinance.

41. The new PUD Ordinance does not require consideration of a proposed PUD's compliance with Nelson County's Comprehensive Plan, instead it charges the Planning Commission with: "First, it shall consider the PUD designation itself and the impact that it would have on the surrounding land use pattern. Second, if the PUD designation is recommended for approval as part of the first step, then the Planning Commission will consider, during its normal consideration of subdivision plats, the development plan submitted as part of the PUD application." Nelson County Joint Zoning Regulation Section 8.2(4). *See, **Exhibit F.***

42. Luxco filed the required Planned Unit Development Application for the Project on or about August 10, 2023.

43. On September 6, 2023, the Joint City- County Planning Commission of Nelson County ("Planning Commission") held a public hearing on Luxco's PUD Overlay Request. During this public hearing, Janet L. Johnson-Crowe, the professional land use planner employed by the Planning Commission to thoroughly review all development requests for their compliance with any applicable local rules and regulations and appropriateness for Planning Commission approval, prepared an extensive report on Luxco's application and presented it in both written and oral form to the Planning Commissioners. *See, **Exhibit G.***

44. At this meeting, Ms. Johnston-Crowe confirmed the following important and relevant facts:

- a. The submitted preliminary plat meets the requirements in Section 8.2A(4).
- b. The submitted final development plan meets the requirements in Section 8.2B(2)(a)-(g).

c. The Property meets the requirements for A-1 PUD Section 6.1(4)(a)-(j).

45. During the public hearing, Luxco introduced compelling evidence which justified the PUD Overlay Request as completely complying with any and all requirements in the Zoning Regulations and KRS Chapter 100.

46. On September 26, 2023, the Planning Commission, voted to recommend denial of Luxco's PUD Overlay Request and adopted specific Findings of Fact. A letter from the Planning Commission containing the Findings of Fact adopted is attached hereto as **Exhibit H**.

47. Instead of limiting its review to the PUD Procedures & Requirements located in Nelson County's Joint Zoning Regulations Section 8.2 governing Planned Unit Developments and Section 6.1(D)(4) governing Distilled Spirit Storage Facilities, the Planning Commission based its findings on compliance with Nelson County's Comprehensive Plan.¹ As stated above, Section 8.2 limits the Planning Commission's permitted scope to compliance with the PUD regulations detailed in Section 6.1(4)(a)-(j) and "the impact that it would have on the surrounding land use pattern."

48. On October 17, 2023, Luxco delivered a letter to the Fiscal Court and the Planning Commission requesting the Fiscal Court reject the recommendation of the Planning Commission. *See, **Exhibit I***.

49. On or about November 7, 2023, the Nelson County Fiscal Court received the entire record of the proceedings before the Planning Commission and voted to hold a second public hearing on Luxco's PUD Overlay Request.

50. On December 11, 2023, the Fiscal Court held a second public hearing and received testimony documenting the Project's unquestioned compliance with Section 6.1(D)(4)

¹ Zoning overlays exist throughout Kentucky, but are not considered to be zone map amendments subject to the finding requirements implemented by KRS 100.213. When an overlay is instituted – like a PUD or a Historic District – the underlying zoning of the subject property remains the same. To install an overlay, communities require the public hearing process and ultimate legislative body approval of a zone map amendment be followed, but the standards to approve an overlay are not governed by KRS 100.213.

governing Distilled Spirit Storage Facilities and any other application Zoning Regulation. The Fiscal Court voted to table the matter at the conclusion of the hearing.

51. Instead of limiting its review to the PUD Procedures & Requirements located in Nelson County's Joint Zoning Regulations Section 8.2 governing Planned Unit Developments and Section 6.1(D)(4) governing Distilled Spirit Storage Facilities, the Fiscal Court entertained arguments based on compliance with Nelson County's Comprehensive Plan. Despite this erroneous interpretation of the new PUD ordinance by the Fiscal Court, Luxco nevertheless provided substantial evidence that the PUD Overlay Request was in substantial compliance with Nelson County's Comprehensive Plan as normally required for a zone map amendment, as opposed to an overlay request.

52. On December 19, 2023, the Fiscal Court voted to deny Luxco's PUD Overlay Request in a vote 3-2, without adopting findings of fact to support its decision. *See, **Exhibit J***

53. Luxco is an injured or aggrieved entity due to the action of the Nelson County Fiscal Court at its December 19, 2023, Fiscal Court Meeting when it purported to deny the Luxco's PUD Overlay Application despite the previously approved Bonds for the Project, the contractual obligations contained in the MOA, and the Project's undisputed compliance with Nelson County's Joint Zoning Regulation Section 6.1(D(4)).

COUNT I
VIOLATION OF 42 U.S.C. SECTION 1983

54. Luxco restates its previous allegations and incorporates the same herein by reference.

55. 42 U.S.C. § 1983 states that “[e]very person² who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of

² Corporations are, by law, considered persons for the enforcement of claims under 42 U.S. Section 1983.

any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .”

56. Each of the Defendants in their official capacity, while acting under the color of state law, deprived Luxco of its vested property interests and liberty interests without due process of law and without just compensation in violation of the Contracts Clause of the United States Constitution, the Fifth Amendment to the United States Constitution, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution, in that:

- a. Defendants entered into a contractual relationship with Luxco through the MOA to ensure the Project is developed and the Bonds are issued in accordance with the Fiscal Court’s approval of the Inducement Resolution.
- b. Luxco has complied with all of the planning and zoning standards, statutes, and ordinances, and duties in its contractual obligations with Nelson County.
- c. Luxco’s property interests are of a type protected by the Fifth and Fourteenth Amendments to the United States Constitution.
- d. Luxco’s liberty interests are of a type protected by the Fourteenth Amendment to the United States Constitution.
- e. Luxco’s contractual interests are of a type protected by the Contracts Clause of the United States Constitution.
- f. Defendants’ actions on September 26, 2023 and/or December 19, 2023, by not complying with the Defendants’ contractual obligations, state statutes, local ordinances, and other applicable law have substantially damaged Luxco in an amount that is in excess of the jurisdictional minimum of this court.

- g. Defendants' actions constitute fundamentally unfair procedures taken by a legislative body that are arbitrary, capricious, egregious, and willful towards Luxco in total disregard of the governing law established to protect Luxco's rights.
- h. Defendants' actions have impaired the obligations of Luxco's contracts.
- i. Defendants' actions have taken Luxco's vested contractual and property rights without due process of law.
- j. Defendants' actions have taken Luxco's vested contractual and property rights without just compensation.

57. By virtue of the Defendants violations of Section 1983, Luxco has been damaged in an amount exceeding the jurisdictional minimum of this Court in an amount to be determined by a jury and described above in detail.

COUNT II
BREACH OF CONTRACT

58. Luxco restates its previous allegations and incorporates the same herein by reference.

59. The MOA constitutes a valid and binding contract between Luxco and Nelson County.

60. The Inducement Resolution, adopted into law by action of Nelson County and as the legal foundation for the MOA, is incorporated into the MOA and itself constitutes a binding contract between Luxco and Nelson County.

61. Luxco has offered to perform, and remains ready to perform, its obligations under the MOA and other applicable agreements relating to the issuance of the Bonds.

62. Despite Luxco's objections, the Fiscal Court, on behalf of Nelson County, denied Luxco's PUD Overlay Request preventing Luxco from further developing the Project on the Project Site.

63. Despite Luxco's objections, the Fiscal Court, on behalf of Nelson County, refused to execute the Lease Agreement, Bond Purchase Agreement and other related documents and refused to take other related actions authorized by the Inducement Resolution.

64. Defendants have breached their obligations under the MOA.

65. As a direct and proximate result of Defendants' breach of the MOA, Luxco has been damaged in an amount in excess of the jurisdictional minimum of this Court and in an exact amount to be determined by a jury and described above in detail.

COUNT III
PROMISSORY ESTOPPEL

66. Luxco restates its previous allegations and incorporates the same herein by reference.

67. In order to store the millions of gallons of distilled spirits produced by Luxco, including its Kentucky Straight Bourbon Whiskey brands, it must construct additional warehouse storage facilities.

68. Defendants promised that if Luxco made the necessary capital expenditures that would enable Luxco to store distilled spirits at the Project Site, Nelson County would entitle the Project Site for the Project and issue the Bonds to incentivize Luxco to make its capital expenditures in Nelson County, Kentucky.

69. Defendants reasonably expected, or should have reasonably expected, that this promise would induce Luxco to act by incurring the capital expenditures necessary to enable the Project.

70. Luxco reasonably relied on the promises of Defendants when it purchased the Project Site for a combined \$2,499,200, which was necessary and required for the Project.

71. Luxco reasonably relied on the promises of Defendants to incur an amount not less than \$2,700,000.00 of capital expenditures (including the real estate purchase price) and other expenses, all of which were necessary and required for the Project.

72. At the time Luxco incurred an amount not less than \$2,700,000.00 of capital expenditures and other expenses necessary to enable the Project, Defendants knew that this amount of expenditures was necessary and that Luxco had, in fact, incurred that amount.

73. After Luxco incurred an amount not less than \$2,700,000.00 of capital expenditures and other expenses necessary to enable the Project, Defendants refused to fulfill their promises to support the Project by denying the PUD Overlay Request.

74. After Luxco incurred an amount not less than \$2,700,000.00 of capital expenditures and other expenses necessary to enable the Project, Defendants refused to fulfill their promise to issue the Bonds.

75. Defendants' refusal to fulfill their promise to support the Project and to "take of cause to be taken such other acts and adopt or cause to be adopted such further proceedings as may be required" has damaged Luxco, specifically, by causing Luxco to have incurred expenditures on capital expenditures for which it has no other use. This includes, but is not limited to, making commitments to expend and incur a minimum of \$1,300,000.00 in order to secure additional warehousing space to age Luxco's bourbon barrels that were assigned to be aged in the Project's new warehouses.

76. Defendants' refusal to fulfill their promise to issue the Bonds has damaged Luxco, specifically, by causing Luxco to have incurred expenditures on capital expenditures for which it has no other use.

77. Injustice can be avoided only by enforcing Defendants' promises to take such acts by approving the PUD Overlay Request for the Project.

78. Injustice can be avoided only by enforcing Defendants' promises to issue the Bonds to finance the costs of the Project.

79. In enforcing the Defendants' promise to take all such acts necessary to support the Project, Luxco is entitled to damages in an amount to be determined by a jury, but not less than \$4,000,000.00, plus related attorneys' fees. This amount will only increase as Luxco continues to incur damages as a result of Defendants' actions.

80. In enforcing the Defendants' promise to issue the Bonds to finance the costs of the Project, Luxco is entitled to damages in an amount to be determined by a jury, but not less than \$4,000,000.00, plus related attorneys' fees.

81. As a direct and proximate result of Defendants' actions, Luxco has been damaged in an amount in excess of the jurisdictional minimum of this Court and in an exact amount to be determined by a jury and described above in detail.

COUNT IV
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

82. Luxco restates its previous allegations and incorporates the same herein by reference.

83. Under Kentucky law, every contract carries with it the legal duties of good faith and fair dealing.

84. Under Kentucky law, parties to a contract are obligated to take every reasonable action required to perform and achieve the objectives of the contract and such performance.

85. Defendants engaged in conduct directly adverse to the objectives of the Inducement Resolution and the MOA and the provisions contained therein, including but not limited to refusing to approve the PUD Overlay Request and refusing to execute the Lease Agreement, Bond Purchase Agreement, and other documents necessary to issue the Bonds.

86. By virtue of the aforementioned conduct, Defendants have breached the implied covenant of good faith and fair dealing owed to Luxco.

87. As a direct and proximate result of Defendants' actions, Luxco has been damaged in an amount in excess of the jurisdictional minimum of this Court and in an exact amount to be determined by a jury and described above in detail.

COUNT V

NELSON COUNTY ORDINANCE 2023-4 CONSTITUTES AN IMPROPER MORATORIUM

88. Luxco restates its previous allegations and incorporates the same herein by reference.

89. Nelson County Ordinance 2023-4 purports to impose “a temporary pause on any action by the Joint City-County Planning Commission, Nelson County Board of Adjustment, the Zoning Administrator/Director, or the Planning Commission staff related to Zoning Compliance Permits or Conditional Use Permit applications for distilled spirits storage facilities in any A-1 zoning district.”

90. This Ordinance constitutes a moratorium prohibiting any property owner from receiving necessary permits to proceed with a distilled spirits storage facility, for which it is otherwise entitled to receive as distilled spirits storage buildings are a permitted principal use in the A-1 zoning district.

91. Nelson County failed to follow the proper procedural steps to issue a moratorium on an otherwise lawful principal permitted use.

92. Luxco was entitled to receive any necessary permits to proceed with the Project at the Project Site at the time the Defendants improperly issued a moratorium.

93. Due to the improper moratorium, Luxco was unable to timely receive any necessary permits to proceed with the Project at the Project Site.

94. As a direct and proximate result of Defendants' actions, Luxco has been damaged in an amount in excess of the jurisdictional minimum of this Court and in an exact amount to be determined by a jury and described above in detail.

COUNT VI

DEFENDANTS' ACTIONS CONSTITUTE A REGULATORY TAKING

95. Luxco restates its previous allegations and incorporates the same herein by reference.

96. As more specifically described above, the approval of an improper moratorium and denial of the PUD Overlay Request combined to deprive Luxco of its intended use of the Project Site. Defendants took these actions with full knowledge of Luxco's intended and entitled use of the Project Site and that their actions would deprive Luxco of its otherwise entitled use of the Project Site after the Defendants had induced Luxco to move forward with the Project.

97. As a direct and proximate result of Defendants' actions, Luxco has been damaged in an amount in excess of the jurisdictional minimum of this Court and in an exact amount to be determined by a jury and described above in detail.

COUNT VII

NELSON COUNTY FISCAL COURT VIOLATED KRS CHAPTER 100

98. Luxco restates its previous allegations and incorporates the same herein by reference.

99. The Nelson County Fiscal Court exceeded its powers and acted arbitrarily and capriciously in denying Luxco's PUD Overlay Request when it failed to adopt specific findings of fact as required by KRS Chapter 100.

100. The Nelson County Fiscal Court exceeded its powers and acted arbitrarily and capriciously in denying Luxco's PUD Overlay Request when it failed to follow the standards set by Zoning Regulation Sections 6.1 and 8.2 in evaluating PUD overlay requests and its denial of the PUD Overlay Request was not supported by substantial evidence in the record.

101. As a direct and proximate result of Nelson County Fiscal Court's actions, Luxco has been injured and aggrieved in an amount in excess of the jurisdictional minimum of this Court and in an exact amount to be determined by a jury and described above in detail.

COUNT VIII - DECLARATION OF RIGHTS

THE NELSON COUNTY FISCAL COURT VIOLATED LUXCO'S RIGHTS AS SECURED BY THE KENTUCKY CONSTITUTION, THE KENTUCKY REVISED STATUTES AND THE UNITED STATES CONSTITUTION

102. Luxco restates its previous allegations and incorporates the same herein by reference.

103. As required by KRS 418.040, an actual, bona fide controversy exists between the parties regarding whether the Fiscal Court's denial of Luxco's PUD Overlay Request violated the specific standards and requirements set forth in KRS Chapter 100 governing land use regulations, Section 6.1(D)(4) and Section 8.2 of the Nelson County Zoning regulations, and the contractual obligations contained in the Inducement Resolution and the MOA.

104. As required by KRS 418.045, Luxco's rights are affected by a "statute, municipal ordinance, or other government regulation," and who otherwise have an actual and substantial interest in the outcome of this controversy. Luxco is therefore entitled to seek a declaration of rights from this Court pursuant to KRS 418.045.

105. Based upon the factual allegations made herein and that the denial of Luxco's PUD Overlay Request unconstitutionally impairs the obligation of contracts and takes Luxco's vested contractual and property rights without compensation in violation of the guarantees of the United States Constitution and the Kentucky Constitution. As such, Luxco is entitled to a declaration of rights from this Court holding the Fiscal Court's denial of the PUD Overlay Request does not constitute a valid method to avoid its contractual obligations under the Inducement Resolution and MOA, is legally null and void, and is therefore unenforceable.

106. Luxco is further entitled to a declaration of rights from this Court holding its PUD Overlay Request is in complete compliance with the Nelson County Zoning Regulations, the Inducement Resolution, and the MOA. As such, the Fiscal Court is required to recognize the ability for the Project to move forward at the Project Site and take any and all steps required for the Bonds to be issued as required in the Inducement Resolution and the MOA.

**THE DECISION TO DENY THE PUD OVERLAY REQUEST WAS ARBITRARY,
CAPRICIOUS AND WITHOUT SUBSTANTIAL EVIDENCE**

107. Luxco restates its previous allegations and incorporates the same herein by reference.

108. Alternatively, if the December 19, 2023, Fiscal Court's denial of the PUD Overlay Request is not found to violate the contractual obligations of Nelson County, the Fiscal Court's decision to deny the PUD Overlay Request for the Property was arbitrary, capricious, and not supported by substantial evidence in the record in violation of KRS Chapter 100.

109. The Fiscal Court's decision to deny the PUD Overlay Request of the Property failed to comply with the provisions of Kentucky and local law related to processing and deciding of zoning entitlement requests for Planned Unit Developments and Distilled Spirits Storage Facilities.

110. Luxco was denied its due process rights by the Fiscal Court.

111. The Fiscal Court acted in excess of its authority when it made a final action to deny the PUD Overlay Request for the Property without adopting specific findings of fact supporting its decision and not acknowledging the unquestioned compliance with every aspect of Section 6.1(D)(4) of the Nelson County Zoning Regulations governing Distilled Spirits Storage Facility.

112. The arbitrary and capricious denial of the PUD Overlay Request was not supported by substantial evidence in the record has caused and will continue to cause Luxco damages in an amount in excess of the jurisdiction of this court.

113. Luxco is entitled to a declaration of rights from this Court holding its PUD Overlay Request is entitled to move forward as the Nelson County Fiscal Court's denial of the PUD Overlay request was in excess of its authority or constitutes an arbitrary and capricious action not supported by substantial evidence in the record.

**NELSON COUNTY ORDINANCE 2023-4 CONSTITUTES AN IMPROPER
MORATORIUM**

114. Luxco restates its previous allegations and incorporates the same herein by reference.

115. Nelson County Ordinance 2023-4, although purporting to be a 30-day pause, is in fact an improper moratorium.

116. This moratorium did not follow the proper procedural steps required to modify, even on a temporary basis, the Nelson County Zoning Regulations to prevent a property owner from applying for the necessary permits to be entitled to construct distilled spirits storage buildings.

117. Luxco is entitled to a declaration of rights from this Court declaring Ordinance 2023-4 to be an unlawful moratorium that prevented Luxco from receiving the necessary entitlements to move forward with the Project.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Luxco, Inc. prays for an order of this Court granting the following relief:

- A. Judgment in Luxco's favor on all claims asserted herein;
- B. Compensatory, direct, special, punitive, and all other damages as permitted in an amount to be proven at trial;
- C. An order and declaratory judgment that Nelson County Ordinance 2023-4 is an improper moratorium that prevented Luxco from proceeding with the Project as a permitted principal use in the A-1 zone.
- D. An order and declaratory judgment that the Nelson County Fiscal Court's denial of the PUD Overlay Request is invalid, not in compliance with applicable law, and in excess of its authority, and is therefore legally null, void and unenforceable;
- E. An order and declaratory judgment directing the Nelson County Fiscal Court to take any required actions to approve the PUD Overlay Request to allow the Project to be constructed as proposed by Luxco.
- F. Pre- and post-judgment interests and costs as appropriate and to which Luxco is entitled under law;
- G. Luxco's attorneys' fees and costs;
- H. A jury trial on all issues so triable;
- I. Any and all other such relief as the Court may deem appropriate.

Respectfully submitted this 17th day of January 2024.

Respectfully submitted,

s/Nick Nicholson

William M. Lear
 Nick Nicholson
 Adam Reeves
 Stoll Keenon Ogden PLLC
 300 West Vine Street, Suite
 2100
 Lexington, KY 40507-1801
 Telephone: (859) 231-3000
 Fax: (859) 253-1093
 Co-Counsel for Luxco, Inc.

s/Jim Willett

Jim Willett
 S. Thomas Hamilton, Jr.
 Saltsman, Willett, Deaton & Hamilton, P.S.C.
 212 E. Stephen Foster Avenue
 P.O. Box 327
 Bardstown, Kentucky 40004
 Telephone: (502) 348-4873
 Facsimile: (502) 348-4878
 Co-Counsel for Luxco, Inc.